



ABINGTON SCHOOL DISTRICT v. SCHEMPP (U.S. 1963)

A 1949 Pennsylvania statute forced public schools to begin each day with reading 10 Bible verses. Teachers required students to rise and recite the verses reverently and in unison, or, as in the Abington School District, students in broadcasting class read the verses over a public address system. Teachers could be terminated for refusing to participate, and students were occasionally segregated from others if they did not join in the daily reading.

The Schempps challenged the school recitation because the Bible readings contradicted the religious training they were providing for their three children.

Bible reading cases in state courts had yielded contradictory rulings since 1910, however, the Schempps's challenge was the first to reach a federal court. In 1958 a special three-judge federal court heard the case and ruled that the Bible-reading statute violated the First Amendment's Establishment Clause ("Congress shall make no law respecting an establishment of religion") and interfered with its Free Exercise Clause ("or prohibiting the free exercise [of religion]"). Local and state officials immediately appealed to the U.S. Supreme Court.

The Supreme Court agreed to hear the appeal along with a case from Maryland, *Murray v. Curlett* (Md. 1962), as a single consolidated case that would henceforth be known as *Abington School District v. Schempp*. The *Murray* case involved Madalyn Murray and her 14-year-old son, William, who were atheists. They had challenged a 1905 Baltimore school board rule requiring each school day to begin with Bible reading or the Lord's Prayer, or both. The Murray's suit alleged that the rule violated the Establishment Clause by discriminating against atheists. The Murrays originally lost in the state courts and on appeal.

When the U.S. Supreme Court heard oral arguments for the consolidated cases, the nation was still debating the court's ruling in *Engel v. Vitale* (U.S. 1962). In that case the Supreme Court held that a school prayer written by New York state officials was unconstitutional. *Abington* gave advocates of school prayer an opportunity to argue that the Court had been wrong in *Engel*.

2 *ABINGTON SCHOOL DISTRICT V. SCHEMPP*

Attorneys representing Pennsylvania and Maryland denied that Bible reading or prayer had a religious nature, and claimed that requiring it therefore did not violate the Establishment Clause. In any case, they argued that the Establishment Clause was designed only to prevent an official state religion. They argued that the Bible readings advanced a legitimate, secular state interest in maintaining order and providing a proper moral climate for students. The attorneys for the states also distinguished *Abington* from *Engel*, because in neither school had government officials written the prayers that were recited. The states also argued that the forbidding of organized prayer in the schools would be antireligious, and would, in fact, amount to the establishment of a “religion of secularism.”

Attorneys for the Schempps and the Murrays maintained that the Establishment Clause, which was applied to the states under the Fourteenth Amendment, prohibited states from requiring that passages from the Bible be read or that the Lord’s Prayer be recited in the public schools, even if individual students could be excused from attending or participating in such exercises upon written request of their parents.

Justice Thomas C. Clark wrote the opinion for the Supreme Court. He concluded that the Pennsylvania exercise violated the Establishment Clause as the New York prayer had in the *Engel* case. Clark’s opinion in *Schempp* was the first separationist opinion of the Supreme Court. Reiterating the premise of *Engel*, the Court held that neither the state nor the federal government may constitutionally force a person to profess belief or disbelief in any religion, nor can it pass laws that aid all religions as against nonbelievers. The court noted that the Establishment Clause withdrew all legitimate power respecting religious belief or expression. The Court, then, for the first time articulated two prongs of the present three-prong test for determining whether governmental action violates the Establishment Clause. In order to be constitutional (1) the purpose of the government action must be secular, rather than to advance or inhibit religion; and (2) the primary effect of the government action must not be to advance or inhibit religion.

The Bible readings in *Abington* were clearly “religious exercises,” Justice Clark concluded, and thus failed at least the “primary effect” prong of the test. Because of this primarily religious effect, it was no defense for the state to argue (even if accurately) that its purposes were the secular ones of promoting order and morality. The Court also disagreed that prohibiting prayer would be “antireligious,” finding that such a prohibition merely accomplished the constitutionally required neutrality of the government concerning religion.

Justice Clark also held that required exercises are not mitigated by the fact that individual students may absent themselves upon parent request, for that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause.

The test for constitutionality articulated by *Abington* clearly explained its limits. Study of the Bible or religion was acceptable in public schools, said Justice Clark,

but only so long as it was “presented objectively as part of a secular program of education.” Religious practices in public school were prohibited by the First Amendment. “While the Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to anyone,” Justice Clark observed, “it has never meant that a majority could use the machinery of the State to practice its beliefs.”

Justices William O. Douglas and William J. Brennan concurred separately in opinions advocating an even stricter separationism than Clark’s (Brennan’s opinion comprised 74 pages). Justice Arthur J. Goldberg also filed a brief concurring opinion.

Justice Potter Stewart dissented, as he had in *Engel*, arguing that religious exercises as part of public ceremonies were permissible as long as children were not coerced to participate. He further believed that a completely noncompulsory scheme of Bible reading that provided alternative activities for nonparticipating students does not violate the Establishment Clause.

Abington was the last of the initial group of the Supreme Court’s cases that prohibited organized prayer in public schools. The issue, however, continues to remain controversial.

Murray v. Curlett (Md. 1962), *rev’d* (U.S. 1963), a school prayer case from Baltimore, reached the same conclusion as *Abington* and the court issued its rulings on both cases on the same day. The court in the school prayer cases developed “balancing test” jurisprudence, in which it weighed the free exercise interests of the religious citizens against secular state interest. The court continued to apply the school prayer cases as it developed its balancing test jurisprudence in the public school context. In *Stone v. Graham* (U.S. 1980), for example, the U.S. Supreme Court invalidated a Kentucky statute that required public schools to post a copy of the Ten Commandments in each classroom. Because the Ten Commandments unquestionably include religious edicts (such as avoiding idolatry), the court found that the principle purpose of the law was religious. The holding in *Stone* was used to develop the “secular purpose test,” which inquires into the legislative intent for a particular action. In other words, is the action intended to benefit religion, or is it to achieve a secular purpose that only coincidentally benefits religion?

ABOLITION

In American legal history, abolition generally refers to the eighteenth- and nineteenth-century movement to abolish the slavery of African Americans. As a significant political force in the antebellum United States, the abolitionists greatly influenced the legal and political landscape. They developed comprehensive but conflicting theories on the constitutionality of slavery. Abolitionists, motivated by

4 ABOLITION

faith, attacked the moral impropriety of the institution. Although abolitionism did not play a powerful role in the political and legal debate until the 1850s, it profoundly influenced subsequent constitutional development, merging with constitutional aspirations of nonabolitionist Republicans after the Civil War to provide the basis for what one writer has labeled the Third Constitution: the Thirteenth, Fourteenth, and Fifteenth Amendments. Their consistent efforts to end the institution of slavery culminated in 1865 with the ratification of the Constitution's Thirteenth Amendment, which outlawed slavery.

The abolitionists' ranks included many different factions and people of different backgrounds and viewpoints, including European and African Americans, radicals, and moderates. The beliefs of the abolitionists ran a broad spectrum, from those who opposed slavery as unjust and inhuman, to those whose objectives were purely economic and focused on the effects that an unpaid Southern workforce had on wages and prices in the North. The abolitionist movement resulted from social and moral impulses that, in time, were aggravated by political and economic factors. New England-based churches, such as the Unitarian Church and the Congregationalist Church totally opposed slavery. The Roman Catholic Church in the United States did not agree that slaveholding was necessarily forbidden to Catholics, and thus, opposed abolitionism. This was despite the fact that from the fifteenth century forward, Catholic missionaries, theologians, and statesmen continuously sought to end the slave trade. The Catholic Church officially condemned the slave trade in 1838.

Methodists and Baptists strongly supported the antislavery movement because they were the largest Protestant denominations in the United States and were influential both in the North and in the South. The Reverend Orange Scott, a Methodist abolitionist leader, wrote "An Appeal to the Methodist Episcopal Church" in 1838 that opened a struggle within the church itself. In 1845, it resulted in a church schism and the organization of the Methodist Episcopal Church, South. The Baptists had a similar history of division over the slavery issue, which also resulted in a schism and the emergence of the Southern Baptist Convention.

The Quakers, beginning in the 1760s, began to oppose slavery. Although conservative in other respects, opposing antislavery agitation could disturb their proslavery business associates and neighbors, so many Quakers joined in the anti-slavery cause.

Many clergymen became leaders in the abolitionist cause. The Reverend George Bourne's effort to preach in Virginia the principles he expressed in *The Book and Slavery Irreconcilable* (1816) resulted in his having to leave the South. The Reverend John Rankin, who worked with the well-known abolitionist Elihu Embree in creating the Manumission Society of Tennessee and publishing the *Manumission Intelligencier*, in 1822, on the banks of the Ohio River, set up the best-known "underground station" for fugitive slaves. Rankin also wrote *Letters on Slavery* (1826), which prepared the way for more famous abolitionist writings.

Beginning in the 1830s evangelical Christian groups, particularly in New England, brought a new radicalism to the cause of abolition. They focused on the sinfulness of slavery and sought to end its practice by appealing to the consciences of European Americans who supported slavery. Rather than endorsing gradual emancipation, these new abolitionists called for the immediate and complete emancipation of slaves without compensation to slave owners. Leaders of this movement included William Lloyd Garrison, founder of the abolitionist newspaper, *The Liberator*, Frederick Douglass, a noted African American writer and orator, and the sisters Sarah Moore Grimke and Angelina Grimke, lecturers for the American Anti-Slavery Society.

Support for “immediate abolition” arose as a result of being proposed by Elizabeth Heyrick in *Immediate Not Gradual Emancipation* in 1824. The religious leaders who supported immediate emancipation included Reverend Samuel J. May and Reverend Theodore Parker. A significant proof that antislavery had ceased to be limited to radicals and sectarians was the conversion of the Unitarian leader, the Reverend William Ellery Channing to the antislavery cause, although he deplored the antagonism between the factions. His *Slavery* (1835) advocated a firm stand on the moral impropriety of the institution and influenced many Northerners who were reluctant to join the antislavery cause.

During what was called the “Martyr Age” in the 1830s, a domestic missionary named Reverend Elijah P. Lovejoy published the St. Louis *Observer* in which he denounced slavery. His antislavery sentiments incited a vengeful mob that vandalized his office. Lovejoy moved across the Mississippi River to Alton, Illinois, where he continued to issue the *Observer*. Three times his press was removed and destroyed. While defending it a fourth time, in November 1837, he was shot and killed. Lovejoy’s murder convinced many Americans to become abolitionists.

John Brown, an itinerant preacher, belonged to no anti-slavery faction. Some radical abolitionists may have known that he planned an insurrection, although they were unwilling to help him. On October 16, 1859, Brown led 21 men into Harper’s Ferry, Virginia (now West Virginia), where they seized the federal arsenal and captured some hostages. In several actions, several local persons as well as members of Brown’s company were killed or wounded. The local slaves refused to rebel, and Brown and some of his men were captured by Colonel Robert E. Lee. Brown’s own serenity as he approached his death, and his eloquence in court and in correspondence, won many Northerners to his cause.

ABORTION

Abortion is the expulsion of the human fetus from the womb before it has reached a state of development sufficient to permit it to survive independently, a state